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1 - Study: Tar balls found in Gulf teeming with 'flesh-eating' bacteria, Houston Chronicle, 11/12/13

<http://www.chron.com/news/health/article/Study-Tar-balls-found-in-Gulf-teeming-with-4977264.php?cmpid=htx>

The number of people contracting the warm-water bacteria that can cause illnesses ranging from tummy upsets to potentially fatal skin lesions has increased in recent years, according to federal data.

2- Bucket Brigade: Air pollution increases at refineries in 2012, Baton Rouge Advocate, 11/12/13

<http://theadvocate.com/home/7520341-125/bucket-brigade-air-pollution-increases>

In issuing its annual report on refinery accidents and pollution releases Tuesday, the Louisiana Bucket Brigade took a slightly different approach by urging refinery workers, employees and people living around the facilities to report what they see, hear and smell.

3 - Beneby: Taxing carbon is expected, San Antonio Express-News, 11/12/13

<http://www.mysanantonio.com/business/eagle-ford-energy/article/Beneby-Taxing-carbon-is-expected-4979086.php>

It's a matter of when, not if, the federal government will begin taxing the carbon produced by major industrial companies such as utilities, CPS Energy CEO Doyle Beneby said Tuesday.

4 - Editorial: Enforcement authority to prevent another West, Dallas Morning News, 11/12/13

<http://www.dallasnews.com/opinion/editorials/20131112-editorial-enforcement-authority-to-prevent-another-west.ece>

State Rep. Joe Pickett, D-El Paso, doesn't have a political motive, as far as we can tell, in pressing for ways to prevent another disaster like the ammonium nitrate fertilizer explosion April 17 in West. Pickett, head of the House Homeland Security Committee, has spent a lot of time identifying gaps in Texas laws that contributed to the West disaster and finding potential legislative solutions to plug them.

5 – More Exide battery chips found along Frisco creek, Dallas Morning News, 11/12/13

http://www.dallasnews.com/news/community-news/frisco/headlines/20131112-more-exide-battery-chips-found-along-frisco-creek.ece?nclink_check=1

Dozens of battery chips from operations at the closed Exide Technologies plant were found along Stewart Creek, according to results of Saturday's Community Lead Clean-Up sponsored by the nonprofit Frisco Unleaded.

6 - New poll shows Louisianians want EPA, not Congress, to regulate carbon emissions, New Orleans Times-Picayune, 11/12/13

http://www.nola.com/environment/index.ssf/2013/11/new_poll_shows_louisianans_sup.html

In a poll released on Tuesday that shows Louisianians' support for reduced pollution from power plants, about 1,000 registered voters expressed strong disapproval for Congress as a whole, saying that the country is headed in the wrong direction, and expressed general support of the EPA's efforts to protect the environment and public health.

7 - US Chamber Urges Congress Block EPA's Power Plant Rules, Environmental Leader, 11/12/13

<http://www.environmentalleader.com/2013/11/12/us-chamber-urges-congress-to-block-epas-power-plant-rules/>

The US Chamber of Commerce is backing legislation that would diminish the EPA's proposed carbon pollution rules for new power plants and block emissions limits for existing power plants.

8 - Vitter renews demand for EPA info on carbon cost estimate, E&E News, 11/12/13

<http://www.eenews.net/eenewspm/2013/11/12/stories/1059990339>

Sen. David Vitter (R-La.) in a letter today again asked U.S. EPA for information about the process that led the Obama administration to increase its estimate for the social cost of carbon in May, arguing the effort was not transparent.

9 – Flaring of gas in North Dakota oil fields draws litigation, scrutiny, Dallas Morning News, 11/12/13

<http://www.dallasnews.com/business/energy/20131112-flaring-of-gas-in-north-dakota-oil-fields-draws-litigation-scrutiny.ece>

From a satellite orbiting the Earth, most of North Dakota appears completely dark at night. But in the western corner of the state, a bright mass of light appears — larger than that of Minneapolis 600 miles away. There's no city, though, just the collective glow of thousands of oil wells being set aflame.

10 - . Jefferson, Plaquemines file coastal erosion lawsuits against oil, gas companies, Baton Rouge Advocate, 11/13/13

<http://theadvocate.com/news/7566666-123/jefferson-and-plaquemines-file-coastal>

Jefferson and Plaquemines parishes have filed a set of nearly 30 lawsuits alleging dozens of energy companies and their contractors destroyed and polluted the parishes' coastal areas, mirroring the philosophy, if not the exact tactics, of a suit a local levee district filed this summer seeking to bring the oil and gas industry to account.

11 – McCabe, Manchin to testify at carbon rules hearing, E&E News, 11/12/13

<http://www.eenews.net/eedaily/2013/11/12/stories/1059990281>

U.S. EPA's top air quality official Thursday will defend her agency's plans to curb carbon dioxide before a House panel weighing legislation that would put those plans on ice.

12 – McCarthy to discuss agency transparency, E&E News, 11/12/13

<http://www.eenews.net/eedaily/2013/11/12/stories/1059990288>

House Republicans this week will ask U.S. EPA Administrator Gina McCarthy to defend her agency's work on improving transparency and address questions on a host of issues.

Study: Tar balls found in Gulf teeming with 'flesh-eating' bacteria

By Carol Christian | November 12, 2013 | Updated: November 12, 2013 4:31pm



Photo By Dave Martin/AP

1 of 19

Mickal Vogt of Covington, La., uses a stick to place tar balls in a jar that washed up on the shore in Orange Beach, Ala., Saturday, June 12, 2010. Large amounts of the oil battered the Alabama coast, leaving deposits of the slick mess some 4-6 inches thick on the beach in some parts.

The number of people contracting the warm-water bacteria that can cause illnesses ranging from tummy upsets to potentially fatal skin lesions has increased in recent years, according to federal data.

Records kept by the [U.S. Centers for Disease Control and Prevention](#) show that the number of cases of Vibriosis nearly doubled between 2008 and 2012 - rising from 588 to 1,111.

Vibriosis includes "Vibrio vulnificus," the bacteria commonly dubbed "flesh-eating." It's rare but tends to be underreported, the [CDC](#) says on its website.

The CDC data on vibriosis includes all vibrio species except cholera, so it's unclear how much of the increase in the past five years is due to infection by the flesh-eating bacteria that can cause death.

One researcher who studies *Vibrio vulnificus* found it highly concentrated in tar balls that appeared along the Gulf Coast after the 2010 BP Deepwater Horizon oil spill.

[Covadonga Arias](#), a professor of microbial genomics at [Auburn University](#) in Alabama, found that *Vibrio vulnificus* was 10 times higher in tar balls than in sand and up to 10 times higher than in seawater.

Her research, conducted with colleagues Zhen Tao and [Stephen Bullard](#), was published Nov. 23, 2011, in *EcoHealth*.

It marked the first analysis of bacteria found on the large amounts of "weathered oil" (such as tar balls) from the BP Deepwater Horizon spill that ended up on the shoreline, the researchers said.

For the study, samples of sand, seawater and tar balls were collected from July through October, 2010, from a beach in Alabama and two beaches in Mississippi.

The authors said their findings have epidemiological relevance since many people have stepped on tar balls or picked them up on the beach.

However, in a June 2012 letter to BP, Dr. [Thomas Miller](#), the deputy director for medical affairs at the Alabama [Department of Public Health](#) stated, "There is no epidemiological evidence to indicate increased rates of Vv (*Vibriosis vulnificus*) infections. Analysis of current and previous years' Vv case numbers indicates there is no increase in the number of cases for years 2010 - 2012."

BP spokesman [Jason Ryan](#) said in an emailed statement: "The Auburn study does not support a conclusion that tar balls may represent a new or important route of human exposure for *Vibrio* infection, or that the detection of *Vibrio* in tar balls would impact the overall public health risk, since there are other far more common sources of *Vibrio*, such as seawater and oysters.

"This is a naturally occurring bacteria found in the Gulf of Mexico. Neither the Alabama Department of Health nor the Centers for Disease Control have reported any significant increase in cases in the last three years and no individual case of vibrio infection has been linked to tar ball exposure."

While there is no proof that tar balls can infect humans, Arias said it's a concern because the bacteria concentration is so high in the samples her team studied.

"At a concentration as high as 1 million *Vibrio vulnificus* cells/g (per gram) of tar ball, I think the potential risk is there," she said by email.

Concentrations in oysters and seawater are typically much lower, she said.

To prove that tar balls can infect humans will require more study, which takes a lot of money, she said.

Bucket Brigade: Air pollution increases at refineries in 2012



Advocate staff photo by BILL FEIG -- Andy Zellinger, Research Analyst, left, and Molly Brackin, Monitoring & Evaluation associate, right, of the Louisiana Bucket Brigade release their annual report on refinery accident and pollution releases for 2012. The big emphasis for this year's report is encouraging whistleblowers to come forward when they see or hear something at one of these facilities.

Number of accidents down from 2011

By **AMY WOLD**

awold@theadvocate.com

In issuing its annual report on refinery accidents and pollution releases Tuesday, the Louisiana Bucket Brigade took a slightly different approach by urging refinery workers, employees and people living around the facilities to report what they see, hear and smell.

"It's a tricky situation for people to give information, but it can be done," said Anne Rolfes, founding director for the Louisiana Bucket Brigade.

She said the report is being issued as part of the group's [Oil Industry Accident Awareness Month](#) in November.

"We find there are a lot of people who have information and we need people to step up," she said.

According to the [report](#) , there were 327 accidents last year, down from 346 accidents in 2011.

However, the amount of material released last year due to those accidents was more than in 2011 with 2.3 million pounds of air pollution — a 15 percent increase over 2011 — and 12.7 million gallons of water pollution.

Oil industry representatives questioned the report's accuracy.

“As we begin to review the Bucket Brigade’s report, it’s worth noting that state regulators and others have expressed deep concerns about the credibility with previous iterations of this annual report,” says a statement from the Louisiana Mid-Continent Oil and Gas Association.

“What we do know, however, is that Louisiana is enjoying an energy boom that is creating thousands of good-paying jobs and helping boost the state’s economy, all while making strong environmental progress and improving worker safety.”

ExxonMobil Baton Rouge public and government affairs manager Stephanie Cargile also took issue with the report, stating in an email that the Baton Rouge complex has made drastic reductions in air pollution from 1990 to 2012 including a 75 percent decrease in volatile organic compounds and a 73 percent decrease in carbon dioxide releases.

One of the report’s key findings was that, although the number of accidents was down last year, the amount of material released was more, largely because of Hurricane Isaac.

About 45 percent of the causes listed for the unplanned releases of pollution at the refineries were weather events, according to the report.

Rolfes said the weather-related reports aren’t all from tropical storms with many of the reasons given for accidental releases listed as rain and wind.

She said this has prompted a local saying in Chalmette.

“The locals say it looks ‘cloudy with a chance of oil,’ ” Rolfes said.

The report also asserts there are accidents at refineries that go unreported or are under reported. Rolfes said she and Louisiana Bucket Brigade know this is the case because workers tell the organization about the accidents or incidents that don’t show up on the records.

One example involves a release of materials at [ExxonMobil’s Baton Rouge](#) facility where there was an initial report of at least 10 pounds of benzene as required by law within an hour of the release.

It turned out the release was more than 31,000 pounds. Although that was reported to DEQ, it was something residents and workers at the plant had already reported to the

Louisiana Bucket Brigade earlier, according to the report.

Cargile, with ExxonMobil, responded that there was extensive air monitoring for two weeks during and after the release by the facility and DEQ and there were no off-site impacts detected.

“Neither LDEQ nor ExxonMobil received any community complaints of odors or health impacts on the day of the incident or during the week following the incident,” Cargile wrote.

A delay in reporting a changing situation to DEQ was part of an [enforcement](#) action DEQ took against the facility earlier this year but DEQ officials said that delay is not the norm.

“I would think the ExxonMobil incident is more of an isolated incident rather than a common process,” said Celena Cage, administrator of the enforcement division at DEQ.

A final finding in the report states refineries should be required to measure, not estimate, how much and what type of pollution is leaving the stacks of the facility.

The report gives a number of suggestions about how individuals, DEQ employees, facilities workers or others can make reports either to regulatory agencies or to the Louisiana Bucket Brigade’s [iwitnesspollution.org](#).

Cage said as the department with the authority to investigate environmental problems, anyone can anonymously report concerns to DEQ through (225) 219-3640 or toll free at (888) 763-5424.

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Beneby: Taxing carbon is expected

By Nolan Hicks : November 12, 2013 : Updated: November 12, 2013 8:21pm



CPS Energy CEO Doyle Beneby spoke on the first day of the Texas Renewables 2013 forum.

It's a matter of when, not if, the federal government will begin taxing the carbon produced by major industrial companies such as utilities, CPS Energy CEO [Doyle Beneby](#) said Tuesday.

Beneby made the remark during a 23-minute luncheon address to a group of energy executives, activists and scientists assembled for the first day of the Texas Renewables 2013 forum.

“At some point, there needs to be a price on carbon,” Beneby said. “I believe that will really be the catalyst to begin to increase the value of renewables.”

The city-owned utility has made a series of moves to make its fleet of power plants more environmentally friendly, in response to coming and potential federal environmental regulations aimed at curbing pollution and climate change.

Lawmakers and environmentalists have repeatedly floated the idea of a carbon tax as a potential option for cutting emissions associated with climate change. Critics of the idea have said that it would raise energy prices and harm American manufacturing.

CPS announced in 2011 that it would close its 871-megawatt J.T. Deely coal-fired power plant, which long had been criticized by environmentalists for its emissions, by 2018 instead of spending more than \$500 million on new pollution control systems.

The utility purchased the much-cleaner gas-fired Rio Nogales power plant in 2012 to replace most of Deely's energy generation.

Beneby also touted CPS' deal to purchase 400 megawatts of solar electricity for [OCI Solar Energy](#) and its broader strategy of leveraging its purchasing power to require suppliers to bring jobs to the San Antonio area.

The solar energy purchase is part of the utility's overall goal of generating 20 percent of its electricity from renewable sources by 2020.

“As we pursue our vision, we've tried to attract private partners to help us achieve that vision, but also to bring economic development and education to San Antonio,” Beneby said.

According to the utility's website, seven companies are part of this initiative, which CPS has dubbed the “New Energy Economy.”

CPS has refused to release its contracts with the companies, citing confidentiality agreements.

However, the utility said it would share additional information about future power purchase agreements — such as its [OCI Solar Power](#) deal — after a series of stories in the San Antonio Express-News examined the arrangement and the newspaper's [Editorial Board](#) called for more transparency.

Editorial: Enforcement authority to prevent another West



LM Otero/The Associated Press

Investigators look through the debris of the destroyed fertilizer plant in West.

Published: 12 November 2013 06:50 PM

State Rep. Joe Pickett, D-El Paso, doesn't have a political motive, as far as we can tell, in pressing for ways to prevent another disaster like the ammonium nitrate fertilizer explosion April 17 in West. Pickett, head of the House Homeland Security Committee, has spent a lot of time identifying gaps in Texas laws that contributed to the West disaster and finding potential legislative solutions to plug them.

That's not politics. That's common sense.

So this newspaper hopes that when Pickett rolls out a bill next year aimed at boosting the state fire marshal's ability to enforce ammonium nitrate safety and security, the Republicans who control the Legislature will get on board.

One of the biggest gaps in state law concerns the inspection and sanctions authority of the two main offices charged with overseeing the 115 sites registered to handle ammonium nitrate. Currently, inspection authority lies with the Office of the Texas State Chemist, based at Texas A&M. The office is charged with sampling animal feed and fertilizer to ensure they're contaminant-free, correctly labeled and environmentally safe.

Those tasks focus mainly on the food-production chain. The bulk storage of ammonium nitrate fertilizer is an industrial activity. We're talking about a fertilizer with high explosive potential that has been used repeatedly for terrorist bombings.

The chemist's office has a small staff and budget. It is not adequately prepared to conduct the kinds of security inspections that ammonium nitrate facilities require.

Ensuring that this chemical is properly handled and stored within fenced, locked warehouses should be the job of the State Fire Marshal's Office, whose mandate is specifically to monitor public and private buildings and facilities for fire safety. Pickett has noted the lack of a statewide standard fire code that would have remediated the dangerous storage conditions identified as factors in the West explosion.

As *The Dallas Morning News* reported Saturday, the State Fire Marshal's Office has completed a statewide survey of registered facilities handling ammonium nitrate fertilizer and found that several are constructed similarly to the flawed West design. Because many are in rural areas, they don't have to abide by a local fire code. The fire marshal's office lacks authority to compel compliance by punishing violators.

Pickett's goal is to close these and other gaps without instituting overly sweeping or onerous regulations that would put people out of business. The bottom line is that these facilities must meet at least a minimally safe, statewide standard and be secure enough to deter would-be terrorists.

To make these rules stick, there's got to be an enforcer. A marshal's office, not a chemist's, is where that authority should reside.

More Exide battery chips found along Frisco creek



These were among the battery chips found during Saturday's cleanup along Stewart Creek.
(Courtesy Frisco Unleaded)

VALERIE WIGGLESWORTH

Published: 12 November 2013 04:20 PM

Dozens of battery chips from operations at the closed Exide Technologies plant were found along Stewart Creek, according to results of Saturday's Community Lead Clean-Up sponsored by the nonprofit Frisco Unleaded.

At least two of the chips were considered hazardous, with lead levels of between 3,000 and 5,000 parts per million, according to the group that had access to a portable XRF analyzer.

The city of Frisco uses a cleanup standard for lead in soil of 250 parts per million.

The presence of battery chips and waste in Stewart Creek is not new. A city survey released earlier this year showed frequent hot spots throughout the area planned for the city's Grand Park.

One piece of waste called slag found during the city survey tested at 35,200 parts per million of lead.

Slag can sometimes be confused with rocks and is more difficult to identify. But volunteers on Saturday said battery chips were frequently visible during their two-hour survey.

"It was pretty astounding, especially for someone who has read the reports," said Jim Schermbeck of Downwinders at Risk, who participated in the cleanup. He said he now has a greater appreciation about the extent of the contamination.

[Click here](#) to see a video of some of the battery chips found in the creek.

Frisco Unleaded and other environmental groups are pushing for complete removal of the hazardous waste from in and around the plant property. The city of Frisco believes the better option is to cap the waste in landfills located on plant property. The Texas Commission on Environmental Quality will ultimately decide how to handle cleanup at the site in consultation with Exide and the U.S. Environmental Protection Agency.

Exide officials submitted a plan last week to state regulators to address the battery chip fragments and slag found downstream from the plant. The TCEQ is reviewing that plan. That document and others are posted here on the city's website.

Exide will host another open house from 6:30 to 8 p.m. Dec. 5 at the Frisco Heritage Center, 6499 Page St. Company representatives and technical consultants will be on hand to answer questions about progress of the cleanup at the Frisco site.



Everything New Orleans

New poll shows Louisianians want EPA, not Congress, to regulate carbon emissions

mary-landrieu-barack-obama-nov2013.jpg

Sen. Mary Landrieu, D-La., waves as she arrives with President Barack Obama aboard Air Force One at Louis Armstrong New Orleans International Airport, Friday, Nov. 8, 2013. The president traveled to the Gulf Coast region to visit the Port of New Orleans to make a case that more exports equal more jobs. (*Jonathan Bachman, The Associated Press*)

Benjamin Alexander-Bloch, NOLA.com | The Times-Picayune By **Benjamin Alexander-Bloch, NOLA.com | The Times-Picayune**

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on November 12, 2013 at 4:23 PM

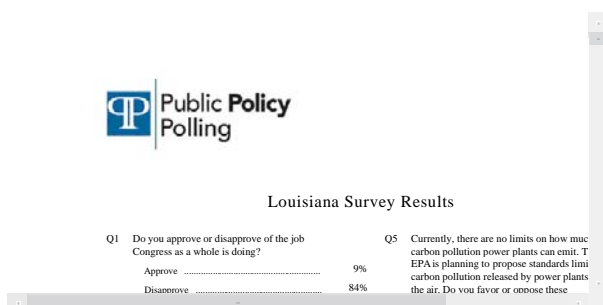
"...We will lose ground on the progress we have made in energy independence, increased manufacturing and economic growth." - Sen. Mary Landrieu

In a **poll released on Tuesday** that shows Louisianians' support for reduced pollution from power plants, about 1,000 registered voters expressed strong disapproval for **Congress** as a whole, saying that the country is headed in the wrong direction, and expressed general support of **the U.S. Environmental Protection Agency's efforts** to protect the environment and public health.

In releasing the results of the survey, the **Natural Resources Defense Council** noted that the polled Louisiana residents would prefer the EPA to decide carbon dioxide emissions limits, not Congress.

Carbon Emissions Poll-Louisiana PPP.pdf

While the U.S. House is expected to pass legislation to block proposed curbs to such emissions, the Senate vote is up in the air. So, the Natural Resources Defense Council and its **Action Fund** – which engages in advocacy and political activities for the nonprofit environmental organization, which has more than 1.4 million members and online activists – hired **Public Policy Polling**, a national survey research firm, to conduct surveys in Louisiana as well as **Arkansas, Illinois, and New**



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votes.

Regardless of carbon pollution limits, the most glaring survey results included the strong disapproval of Congress -- 84 percent disapproved of the job Congress as a whole is doing-- and the fact that 67 percent of respondents said they felt the country is headed in the wrong direction.

After President **Barack Obama** in June directed the EPA to use the **Clean Air Act** to curb carbon dioxide emissions, the EPA presented proposed CO2 emission standards on Sept. 20 that specifically target fossil fuel-fired power plants.

Under deadlines set by the president, the EPA is to propose an "emissions guideline" rule by June 2014, and adopt a final emissions guideline rule by June 2015, after public comments.

Hampshire -- other states generally known to have senators who can be swinging votes on carbon-related issues.

In the automated phone survey in Louisiana conducted on Oct. 30 and 31, respondents generally said they favored EPA's proposed plans to limit carbon air pollution released by power plants. And, the majority of respondents indicated that they trust EPA scientists and experts to decide on carbon limits, rather than politicians in Congress.

Still, when asked whether they would be more or less likely to support Sen. **Mary Landrieu** for re-election if she voted to block the EPA from setting such standards, 61 percent of respondents said it would make a difference in their vote, or even that it would make them more likely to vote for her. Thirty-three percent of those surveyed in Louisiana responded that it would make them less likely to vote for her, and 6 percent responded that they weren't sure how it would affect their

After that, states would have until the end until July 2016 to adopt and submit plans that apply enforceable standards consistent with those guidelines to carbon-emitting power plants.

After the EPA rolled out the proposed rules in September, **Landrieu stated** that "natural gas and coal provide our nation with abundant and affordable energy, but these proposed regulations will drive domestic energy production down and electricity costs up for our families."

"The EPA's regulations for coal plants are also not practical," Landrieu continued. "Requiring them to use technology that has not been proven viable in industrial settings is completely backward.

"If these overzealous regulations take hold, we will lose ground on the progress we have made in energy independence, increased manufacturing and economic growth," she said.

Landrieu's statement is not a surprise; she **previously has spoke out against EPA efforts to regulate carbon emissions**.

Landrieu, a top target of Republicans in 2014, sits on the Senate's Energy and Natural Resources Committee and could potentially **become chairwoman of that committee** if she is re-elected next year and if Democrats retain the Senate majority. In the 2014 election, she is being challenged by Rep. Bill Cassidy, R-Baton Rouge.

Meanwhile, House Energy and Power Subcommittee Chairman Ed Whitfield, R-Ky., and Sen. Joe Manchin, D-W.Va., are scheduled to hold a hearing on Nov. 14 on proposed legislation that would prevent the EPA from setting new carbon emissions standards for existing power plants unless Congress passes legislation setting a date for the standards to take effect.

That legislation also would repeal the EPA's proposed standards setting carbon limits for new power plants, and it would require the EPA administrator to send Congress a report on any proposed rules the agency issues on greenhouse gas standards in the future.

Whitfield and Manchin claim that the EPA regulations would harm state economies and would require power plants to acquire new technologies that are not commercially viable.

The U.S. Chamber of Commerce on Monday announced its support for the Whitfield-Manchin legislation that would thwart EPA attempts to regulate emissions. The Chamber stated that the legislation "would provide critical protections against the Environmental Protection Agency's aggressive and economically damaging greenhouse gas rules applicable to new and existing power plants."

It stated that the EPA rules would be tantamount to a ban on the construction of new coal-fired power plants.

Environmental Leader

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- US Chamber Urges Congress Block EPA's Power Plant Rules

November 12, 2013

US Chamber Urges Congress Block EPA's Power Plant Rules

The US Chamber of Commerce is backing legislation that would diminish the EPA's proposed [carbon pollution rules for new power plants](#) and block [emissions](#) limits for existing power plants.

In a [letter to Congress](#), the Chamber, which represents more than 3 million businesses, says the Clean Air Act is “not the appropriate vehicle to regulate greenhouse gas emissions” and warns the EPA's GHG emissions limits for power plants will raise power prices with “negative implications extending to nearly every segment of the economy.”

The Chamber endorses draft legislation introduced last month by Sens. Joe Manchin (D-W.Va.) and Ed Whitfield (R-Ky.) that would [repeal the power plant rules already proposed](#) and require any future GHG standards on new coal-fired power plants be achievable by “commercial power plants operating in the real world.” This would prohibit the EPA from mandating CCS until it has been employed on commercial-scale power plants. The bill would also require a federal law to set an effective date for any EPA guidelines for existing plants.

[Carbon capture](#) and sequestration (CCS) technology, which would be required to cut new plants' emissions, is “nowhere near commercial viability,” the Chamber's letter says, adding that the EPA's designation of CCS as the best system for compliance is essentially “a ban on the construction of new coal-fired power plants.”

The [coal](#) industry has also attacked the EPA's power plant rules. National Mining Association (NMA) president and CEO Hal Quinn in September called them risky and said they will lead to higher utility bills and “significant” job losses.

Photo Credit: [coal power plant](#) image via Shutterstock

Energy Manager News

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5. CLIMATE:**Vitter renews demand for EPA info on carbon cost estimate****Jean Chemnick, E&E reporter***Published: Tuesday, November 12, 2013*

Sen. David Vitter (R-La.) in a **letter** today again asked U.S. EPA for information about the process that led the Obama administration to increase its estimate for the social cost of carbon in May, arguing the effort was not transparent.

Vitter directed today's request to Office of Atmospheric Programs Director Sarah Dunham, who last week testified before a subpanel of the Environment and Public Works Committee, on which he serves as ranking member.

Dunham responded to similar questions by Vitter at last week's Oversight Subcommittee hearing by saying her office had minimal involvement in crafting the SCC, though it had a hand in developing the analysis and modeling that led to it. She promised to convey his questions back to the agency.

Vitter criticized EPA for failing to respond to earlier requests for information. "To anyone outside the administration, including me, this has been like a black box," he said at the hearing.

In his letter today, Vitter again asked Dunham for specifics, including the names of any colleagues who might have been part of the interagency working group that compiled the estimate. None of those details has been provided by the working group, despite the estimate's importance as an input for rulemakings, he said.

"These estimates are of great significance not only because they are used to justify costly and controversial regulations, but also because the specific participants with any level of involvement in the process behind developing the estimates have been kept completely anonymous," he wrote.

He noted that earlier this month the White House Office of Management and Budget announced minor changes to the SCC revision from May, and he asked for more details about why that was done ([E&ENews PM](#), Nov. 4).

OMB has promised more extensive public comment for the SCC, even though it does not constitute a rulemaking.

The letter notes that EPA discusses the SCC in its regulatory impact statement for its September proposal to limit greenhouse gas emissions from future power plants. But those who track regulatory actions say that although the estimate also made an appearance in the cost-benefit analysis for a microwave efficiency rule earlier this year, it was not a deciding factor in allowing the rule to go forward.

Vitter gave EPA a deadline of Dec. 3 to respond to his queries.

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Flaring of gas in North Dakota oil fields draws litigation, scrutiny



Tom Stromme/The Bismarck Tribune

Hess Corp. general manager Steve McNally spoke in Bismarck last month about how a new pipeline would help his company ship natural gas and reduce flaring in the North Dakota oilfields. With him were Gov. Jack Dalrymple (left) and Terrance Kutryk, CEO of Alliance Pipeline, which invested \$170 million in the project.

By JAMES OSBORNE

Published: 12 November 2013 09:16 PM

From a satellite orbiting the Earth, most of North Dakota appears completely dark at night.

But in the western corner of the state, a bright mass of light appears — larger than that of Minneapolis 600 miles away. There's no city, though, just the collective glow of thousands of oil wells being set aflame.

When oil comes out of the ground, it is accompanied by natural gas. And in newly tapped areas such as North Dakota's Bakken formation, drillers without access to pipelines often resort to "flaring" the gas at the well. But that practice is coming under attack as the landowners who

lease their drilling rights to oil companies sue for the royalties they would have received had the gas been captured and sold.

Last month, royalty owners in North Dakota sued 10 U.S. and international oil companies, including XTO Energy of Fort Worth and Marathon Oil of Houston. The plaintiffs want their share of an estimated \$1 billion worth of natural gas being flared in the Bakken each year.

“There’s so much waste going on,” said Britton Monts, an Austin attorney who is representing landowners in the suits. “By forcing them to pay royalties on that flared gas, we hope that pushes these producers to fix the problem a lot faster.”

Flaring occurs to some degree in most oil fields. But according to experts, it is a particular problem in North Dakota, where pipeline construction lags far behind an oil boom that has increased production more than fivefold in five years.

According to a study by Ceres, a nonprofit aimed at improving corporate sustainability, natural gas flaring in North Dakota has increased more than 50 percent over the last two years to levels previously unknown in the United States and comparable to those of Russia and Nigeria.

The oil companies named in the litigation declined to comment or did not respond to requests for comment on the lawsuits.

“We’re still reviewing the specific allegations,” said Suann Lundsberg, a spokeswoman for XTO.

Industry’s view

But Tessa Sandstrom, a spokeswoman for the North Dakota Petroleum Council, which represents drillers in the Bakken, said oil companies were eager to stop the flaring. She said that although companies had spent \$6 billion expanding infrastructure, getting pipelines built is a lengthy process that involves negotiating complex permitting rules. Companies must navigate various state agencies and three American Indian tribes that control 1,300 square miles in the Bakken.

“You have to negotiate with every landowner. Usually you don’t have too many people who push back, but it is time-consuming,” Sandstrom said.

“Not to mention we have a very short construction season here,” she said. “Once we had a blizzard in June.”

The flaring is fast becoming a political issue in North Dakota, where oil is transforming an economy that traditionally rested on the backs of wheat and barley farmers.

In April the state Legislature passed a law increasing tax incentives to get companies to stop flaring gas. And now the oil companies themselves have formed a task force to find a way past the logjam to expedite construction of pipelines.

Last month, state Attorney General Wayne Stenehjem commented that North Dakota landowners' tolerance for flaring is "coming to an end."

"We all know it's a resource that's being wasted," he said, according to the *Grand Forks Herald*.

Some have been critical of North Dakota's regulatory environment. In its report, Ceres described the state as "unusually permissive" compared with other oil-rich states, such as Texas, California and Alaska.

And while the proportion of natural gas being flared in North Dakota is shrinking — from 36 percent in September 2011 to 29 percent in May of this year — it dwarfs that of Texas. In the Lone Star State, less than 1 percent of the natural gas that comes out of the ground is flared, according to the Texas Railroad Commission.

Royalties and costs

Disputes between oil companies and those they lease mineral rights from are nothing new — from well counts to the costs subtracted from royalty checks. But suing an oil company for the value of flared natural gas could be a first, said Owen Anderson, a professor at the University of Oklahoma College of Law who studies the oil and gas industry.

In the litigation filed last month, attorneys argue that the 10 oil companies have violated North Dakota law by not getting an exemption to flare natural gas beyond the 12-month standard allowed by state regulators.

But Anderson said they will have to prove that there was a profit to be had.

"If the gas could be gathered and put into the marketplace at a profit, you would assume oil companies would do it," he said. "They have the much larger share of any royalties."

The case will have to take into account the huge logistical challenges and costs of building pipelines and gas-processing plants at a time when natural gas is selling for less than a third of what it was five years ago.

Already, there is speculation that if the litigation is successful, it could raise the cost of drilling and put a large speed bump in front of North Dakota's flourishing oil economy.

Monts says the North Dakota litigation is gathering momentum.

"Since the lawsuits have been filed, we've been getting a lot of interest from other royalty owners," he said. "We found a pattern, and it's a lot more than 10 that are flaring in violation of North Dakota law."

Jefferson, Plaquemines file coastal erosion lawsuits against oil, gas companies

30 suits take on oil industry for damage

BY JEFF ADELSON

jadelson@theadvocate.com

Jefferson and Plaquemines parishes have filed a set of nearly 30 lawsuits alleging dozens of energy companies and their contractors destroyed and polluted the parishes' coastal areas, mirroring the philosophy, if not the exact tactics, of a suit a local levee district filed this summer seeking to bring the oil and gas industry to account.

The companies ignored state laws that required coastal land used by oil and gas companies to be maintained properly and eventually restored to its original condition, according to the parish suits, which were filed Friday and Tuesday. The failure to take those actions has been linked to significant coastal erosion in the state, and the suits contend that the company's actions led to contamination of coastal water and land with toxins.

That damage occurred despite specific requirements in their permits that the companies had to repair whatever harm they inflicted on the coast, according to the suits.

"We know we have the authority, we know the regulations were violated, we know the guidelines were violated," said John Carmouche, of the Baton Rouge firm Talbot, Carmouche and Marcello, the lead lawyers for the parishes.

The suits, filed in the parish district courts, allege companies such as ExxonMobil, Shell, Chevron and many others ignored state laws governing their activities in coastal areas, failing to restore oilfields that had been destroyed by the pits and canals that are a part of oil and gas extraction, and leaving polluted land and water in their wake. The parishes each filed their own [set of lawsuits](#) covering a total of 28 oilfields in their jurisdictions, seven in Jefferson Parish and 21 in Plaquemines.

The case is largely based on a 1978 law that defines companies' responsibilities in maintaining, closing and restoring sites they worked on. At the time, the law was opposed by oil and gas interests, Carmouche said.



Advocate staff photo by HEATHER MCCLELLAND -- Plaquemines Parish dredged Wilkinson Canal, and created this "marsh wall" with the excess. The cell, to the left of the wall, was then filled with sediment to create a fringe marsh the parish hopes will weaken storm surges that threaten property. The fringe marsh will soon be populated with vegetation through natural processes.

Since then, the energy industry has continued working on projects in coastal areas under a set of regulations governing how the areas must be maintained and requiring they be completely restored when they're no longer needed. However, enforcement of those regulations has been lax or non-existent, relying largely on self-reporting by the companies doing the work, Carmouche said.

"We've taken depositions of prior (state conservation) commissioners going back to the '70s and '80s, and they had three investigators to investigate the entire state of Louisiana," he said.

Among the regulations in that law was the duty to see that sites were "cleared, revegetated, detoxified and otherwise restored as near as practicable to their original condition upon termination of the operations to the maximum extent practicable."

None of the companies ever filed permits indicating they had restored those fields, the suits say.

"I think the oil companies have an obligation to self-report, I think the oil companies are to blame and I think the oil companies took advantage of the state," Carmouche said.

Should the parishes' suits succeed, the oil and gas industry would have to pay to restore that damage or provide compensation for the land destroyed, he said.

Carmouche did not have figures for how much the restoration efforts could cost or the total amount of land involved.

The parishes' suits are much more narrowly tailored, and potentially simpler, than the massive case brought against oil and gas companies by the Southeast Louisiana Flood Protection Authority-East earlier this year. While both cases rest, at least in part, on the alleged failure of energy companies to abide by the terms of their permits, the parishes merely have to prove that point.

The flood protection authority's suit requires the levee board's lawyers to prove that oil and gas activity in southeast Louisiana led to erosion that eventually allowed more destructive storm surge to hit the New Orleans area — in turn requiring more complicated and expensive flood protection systems. Proving that chain of causality would be required not just to win the case but also to stave off any challenges to the flood protection authority's legal right to file the suit in the first place.

The parishes, by contrast, have direct standing under state law to sue simply over a failure to adhere to coastal regulations.

While all of the suits take aim at coastal erosion and other damage allegedly caused by oil and gas companies, the parishes' suits more closely mirror the so-called "legacy lawsuits" brought by landowners to require energy companies to repair damage done to their properties. Carmouche and his partners have been heavily involved in those suits

for the last decade.

The parishes have been considering the lawsuits for about a year, meaning they were in the works for months before the flood protection authority's suit became public.

While the flood protection authority's suit drew the immediate ire of Gov. Bobby Jindal's administration, state [officials have so far taken a far softer tone with the parish suits](#) and stressed the differences between the two. Those include distinguishing between suits brought by an appointed board and by elected officials, in this case the Parish Councils, and the more targeted approach in the parish's case.

The oil and gas industry, however, has been less discriminating and has sought to tie the cases together.

"These suits are more of the same," Louisiana Oil and Gas Association President Don Briggs said in an email. "Extort as much money from the oil and gas industry as possible, thus lining the pockets of a small group of trial lawyers. Plaquemines and Jefferson Parish are simply following the precedence set by the South Louisiana Flood Protection Authority-East."

Louisiana Mid-Continent Oil and Gas Association President Chris John said Tuesday he had not yet seen the parishes' lawsuits but that he opposed a piecemeal approach to coastal restoration efforts, instead pointing to the state's Coastal Master Plan. That 50-year, \$50 billion proposal is intended to restore wetland damage and is largely funded through existing revenue streams, rather than suits against oil and gas companies, though it will receive money from the BP oil spill case.

"I do believe that repairing our coast is a massive undertaking that needs a master plan," John said. "If you start to piecemeal it, its sure to have adverse affects on the project next door or the project on the other side of the marsh."

John also suggested his organization could "continue to rally not only the industry but the administration" against all the suits.

But Carmouche said the law is clear and the industry needs to be held accountable.

"These are state regulations that were not followed and need to be enforced, and the parishes, I think, are the proper parties under the regulation to make sure the parishes are restored to their natural state," he said.

THE BEST WAY TO TRACK CONGRESS

3. CLIMATE:

McCabe, Manchin to testify at carbon rules hearing

Jean Chemnick, E&E reporter

Published: Tuesday, November 12, 2013

This story was updated at 10:25 a.m. EST.

U.S. EPA's top air quality official Thursday will defend her agency's plans to curb carbon dioxide before a House panel weighing legislation that would put those plans on ice.

EPA acting Assistant Administrator for Air and Radiation Janet McCabe will face the House Energy and Power Subcommittee chaired by Rep. Ed Whitfield (R-Ky.), who is floating a proposal to scrap EPA's proposed rule for new power plant CO₂ emissions and to make future plans to regulate existing plants contingent on congressional approval.

The Energy and Commerce subpanel will also hear from Whitfield's Senate collaborator on the proposal, Democrat Joe Manchin of West Virginia, who has called it a "reasonable" and "doable" approach to EPA carbon regulation.

The measure, which has yet to be formally introduced, would limit EPA's carbon rules for new power plants to what can be achieved using already widely deployed technology. It would effectively bar the agency from moving forward with its proposal released in September to require future power plants to use partial carbon capture and storage technology to reduce their carbon dioxide output.

EPA is in the process of gathering stakeholder input ahead of writing a rule for today's electric power fleet, but Whitfield-Manchin would require both chambers of Congress to approve that guidance before it takes effect -- a high hurdle given the GOP's current control of the House.

Yesterday, Bruce Josten, the U.S. Chamber of Commerce executive vice president of government affairs, issued a letter to Congress urging legislators to act on the proposal and saying that the organization "strongly supports draft legislation that would provide critical protections against the Environmental Protection Agency's (EPA) aggressive and economically damaging greenhouse gas rules applicable to new and existing power plants."

Whitfield has said he would like to see his bill move during this session of Congress, but while it is likely to clear the House with little difficulty, it could hit head winds in the Democratic-controlled Senate. Manchin has said he plans to recruit other Democrats from fossil fuel-producing states to support the measure, but he has yet to announce any new co-sponsors.

Sen. Mary Landrieu (D-La.), who is up for re-election next year, said last week that she is still mulling whether to back Manchin's bill.

Schedule: The hearing is Thursday, Nov. 14, at 9:30 a.m., in 2123 Rayburn.

Witnesses: U.S. EPA acting Assistant Administrator for Air and Radiation Janet McCabe; Sen. Joe Manchin (D-W.Va.); Oklahoma Attorney General E. Scott Pruitt; Fulton, Ariz., Mayor Henry Hale; Tony Campbell, president and CEO East Kentucky Power Cooperative; Donald van der Vaart, permitting section chief, North Carolina Department of Environment and Natural Resources Air Quality division; Edward Cichanowicz, engineering consultant; and Ross Eisenberg, vice president of energy and resources policy, National Association of Manufacturers.

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THE BEST WAY TO TRACK CONGRESS

4. EPA:

McCarthy to discuss agency transparency

Jason Plautz, E&E reporter

Published: Tuesday, November 12, 2013

House Republicans this week will ask U.S. EPA Administrator Gina McCarthy to defend her agency's work on improving transparency and address questions on a host of issues.

McCarthy will appear before the House Science, Space and Technology Committee on Thursday as part of the panel's annual oversight work. It's McCarthy's first appearance before that committee since being confirmed to the EPA post in July and only her second congressional appearance in the top spot.

Coincidentally, the hearing will be held at the same time as a House Energy and Commerce hearing on the agency's rules limiting greenhouse gas emissions from existing power plants that will feature acting air chief Janet McCabe ([see related story](#)).

While the Science hearing is expected to cover a wide range of issues, one topic sure to be at the top of the agenda will be an August committee subpoena of data from confidential health studies that form the backing of many of the agency's air regulations. Chairman Lamar Smith (R-Texas) said the information EPA provided in response was "insufficient" and has continued to press for more scientific data ([E&ENews PM](#), Sept. 3).

Also at issue will be the use by agency officials of secondary email accounts and aliases, a practice that Smith and other committee Republicans have railed against in the past. In response to an inspector general audit on EPA's email practices, Smith said in a statement that the agency had "significant work to do if it wants to ensure transparency and regain the public's trust."

The committee has also recently hit EPA for issues from Clean Water Act jurisdiction to how it selects members for the scientific panels that review EPA rules.

Committee Democrats have backed the agency, with ranking member Eddie Bernice Johnson (Texas) in August imploring Smith in a letter to stop "abusing Congressional power to harass the EPA Administrator" in response to the subpoena ([Greenwire](#), Aug. 7).

EPA has worked to improve transparency on a number of issues as part of a deal struck with Sen. David Vitter (R-La.) to free up McCarthy's nomination in the Senate. That included establishing a new guidance on records maintenance and agency officials' use of personal email accounts for business purposes ([E&ENews PM](#), July 9).

Schedule: The hearing is Thursday, Nov. 14, at 10 a.m. in 2318 Rayburn.

Witnesses: U.S. EPA Administrator Gina McCarthy.

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